

CANADA CUSTOMS AND GLAD DAY BOOKSHOP

A Brief Prepared for the Canadian Chapter of PEN International

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TABLE OF CONTENTS

Brief Summary of 1988-89 Customs Seizures	Tab A
Memorandum D9-1-1	Tab 1
Customs Notice April 13, 1987	Tab 2
Seizure Notices with Commentary	Tab 3
Salman Rushdie Affair Articles	Tab 4
Defence to Deputy Minister April 7, 1989	Tab 5
Decision Letter November 17, 1989	Tab 6
Statement of Defence December 6, 1989	Tab 7
Proposal Letter to Russell Armstrong	Tab 8

BRIEF SUMMARY OF 1988-89 CANADA CUSTOMS SEIZURES

prepared by Jearld Moldenhauer

Glad Day Bookshop, Toronto

This summary and the attached documents briefly outline the censorship activities of Canada Customs as they have affected the operation of my store and the availability in Canada of the wide variety of literature published by and for the lesbian and gay communities.

March 27, 1987 - The Joy of Gay Sex Decision

On this day, a decision in the District Court of Ontario ruled that The Joy of Gay Sex by Charles Silverstein and Edmund White was not obscene in an appeal brought before it by the Canadian Committee Against Customs Censorship and Glad Day Bookshop. This overturned a ruling by Canada Customs which had banned the book for over a year.

At this time, Internal Memorandum D9-1-1, an (see tab 1) interpretational guideline used by Customs officials to screen books and magazines coming into Canada, singled out among other sexual acts descriptions or depictions of anal sex in any context as grounds for prohibiting material from the country. This Memorandum was created in the aftermath of a Supreme Court of Canada ruling which held that the previous wording of the Customs tariff dealing with "obscene" materials was too vague and therefore unconstitutional. The judge in the Joy of Gay Sex ruling held that although the concept of anal sex might be distasteful or repugnant to him and others, it was a central sexual practise among a significant portion of the male population in this country and depictions of it could not be deemed prima facie obscene. However, the decision made no reference to extensive Charter arguments made against the Customs tariff during the court proceedings by counsel Charles Campbell.

March 1987 - September 1988 - Moratorium

After our court victory it appeared that someone in Ottawa initiated a "hands off" period to avoid another embarrassing confrontation until the public had "forgotten" about the Joy of Gay Sex case. This was important government strategy since they had no intention of amending Internal Memorandum D9-1-1 to bring it in line with the Joy of Gay Sex ruling. Depictions of anal sex remained in the list of "obscenities". A few paragraphs were added to the Memorandum instructing border officials to weigh novels 'as a whole' and to consider the overriding artistic and literary merits, if they felt there were any, when making determinations. (see tab 2)

September 1988 - The Seizures Begin Again

Below is a list of dates and titles of books detained and/or banned by Customs. The magnitude of the list speaks for itself and proves a pretty damning comment on the ability of Customs officers to recognize 'artistic and literary merits'. This list also makes the case for selective application or targeting, something Customs has repeatedly denied. No other bookshop in the country has had Baudelaire's poems detained, for instance, and the same would hold true for books by Alan Ginsberg or Christopher Isherwood with the exception that only other gay bookshops in Canada have had trouble importing these titles.

September 13, 1988

The Confessions of Danny Slocum by George Whitmore. St. Martin's Press, 1980.

The Sanctified Church by Zora Neale Hurston. Turtle Island Foundation, 1981.

Reality Sandwiches by Allen Ginsberg. City Lights Books, 1985.

Kaddish & Other Poems by Allen Ginsberg. City Lights Books, 1978.

Story of the Eye by Georges Bataille. City Lights Books, 1987.

Research #4/5: William S. Burroughs, Brion Gysin. Research, 1985.

Twenty Prose Poems by Charles Baudelaire. City Lights Books, 1987.

September 28, 1988

The Sexual Perspective: Homosexuality & Art in the Last 100 Years in the West by Emmanuel Cooper. RKP, 1986.

Men Loving Men: A Gay Sex & Consciousness Guide by Mitch Walker. Gay Sunshine Press, 1974.

October 11, 1988

The Finer Grain by Denise Ohio. Naiad Press, 1988.

The Amazon Trail by Lee Lynch. Naiad Press, 1988.

October 26, 1988

Midnight Mass & Other Stories by Paul Bowles. Arena, 1986.

Up Above the World by Paul Bowles. Arena, 1984.

The Spider's House by Paul Bowles. Arena, 1986.

Pages From Cold Point by Paul Bowles. Arena, 1986.

ArkyTypes by Sara Maitland & Michelene Wandor. Methuen, 1987.

Kansas in August by Patrick Gale. Arena, 1988.

All the Conspirators by Christopher Isherwood. Methuen, 1984.

A Meeting By the River by Christopher Isherwood. Methuen, 1988.

November 4, 1988

All the Muscle You Need by Diana McRae. Spinsters, 1988.

Testimonies: A Collection of Lesbian Coming Out Stories edited by Sarah Holmes. Alyson, 1988.

Sister No Blues by Hattie Gossett. Firebrand, 1988.

Trash by Dorothy Allison. Firebrand, 1988.

Diamond Are a Dyke's Best Friend by Yvonne Zipter. Firebrand, 1988.

Ambitious Women by Barbara Wilson. Seal Press, 1985.

Black/Out: A Magazine of the National Coalition of Black Lesbians & Gays.

November 29, 1988

Meatmen Continues: Vol. 4. Leyland Publications, 1988.

More Meatmen: Vol. 2. Leyland Publications, 1986.

November 30, 1988

When I Was Eighteen: Homosexual Encounters From First Hand. Leyland Publications, 1988.

Meatmen Continues: Vol. 4. Leyland Publications, 1988.

December 5, 1988

Orgasms: Homosexual Encounters from First Hand. Leyland Publications, 1985.

Lust: Licentious Underground Sexy True Gay Encounters.
Gay Sunshine Publications, 1985.

Hot Acts: Homosexual Encounters From First Hand. Gay Sunshine Press, 1984.

December 8, 1988

Violent Visitor by Tom of Finland.*

Sightseeing the Guards by Tom of Finland.*

Postal Rape by Tom of Finland.*

(*The titles of Tom of Finland's books could be misleading to some. These are books of drawings by an artist who is widely recognized for his highly skilled execution, his clear artistic intentions and his technical excellence. He has been publishing his drawings in the US since 1957 and they have become classics in the history of popular gay art. His subjects are the various icons of masculinity as they appear in the obsessions of popular gay fantasy. He presents his subjects with a sense of humour, satire and enjoyment.)

December 19, 1988

Parisian Lives by Samuel M. Steward. St. Martin's Press, 1984.

Uncle Stephen by Forrest Reid. Gay Men's Press, 1988.

Coming to Power edited by Members of Samois. Alyson, 1987.

Street Lavender by Chris Hunt. Gay Men's Press, 1986.

Some Boys by Michael Davidson. Gay Men's Press, 1988.

Macho Sluts: Erotic Fiction by Pat Califia. Alyson, 1988.

Hot Living: Erotic Stories about Safer Sex edited by John Preston. Alyson, 1985.

February, 1988 - Rushdie Affair and After

Canada Customs seized The Satanic Verses by Salman Rushdie. Canada alone among all western democracies succumbed to a knee jerk reaction to ban the book, revealing in high profile to Canadians and to the world the bureaucratic system surrounding our "democratic" rights to freedom of speech. As well, it exposed the true psychological leanings of the power structure: when in doubt, come out on the side of restriction and control, not on the side of freedom.

Although the banning lasted only 48 hours and ended Monday morning after a weekend of media battering of Customs' powers and practices--with Mulroney promising reform in two different television interviews (in front of 10 Downing Street and again in Holland)--this event is worth considering in relation to the struggle between Glad Day and Canada Customs. With the exception of an excellent feature piece in the Toronto Star linking the Rushdie affair with Glad Day's almost daily book seizures, no media person made the connection between the control and suspicion gay and lesbian literature is subjected to and the events surrounding the Rushdie book. (see tab 4)

My own conclusions were simply that the combination of general societal prejudice toward the gay community and the fact that I am a small businessman selling many books written by lesser established writers, published by small less powerful presses, resulted in an attitude of indifference to my community and the books. Freedom of speech in Canada is something only for the rich, the powerful and the majority population groups.

The only positive thing to come out of the Rushdie affair for Glad Day was another moratorium on book banning. Since Mulroney had no intention of changing the procedures of Canada Customs, the best damage control for them was again to lie low for a few months until things were forgotten in the mind of the public. Unfortunately, these orders were not conveyed to Customs agents in Toronto until after we experienced one more seizure on March 2, 1989. The books included:

Puppies by John Valentine. Gay Men's Press, 1988.

Lesbian Sex by JoAnn Loulan. Spinsters, 1984.

Travels With Diana Hunter by Regine Sands. Lace Publications, 1986.

Someone Special photographs by Max India. Gay Men's Press, 1988.

In this case I was able to obtain the release of all the books only 5 days after their "detention". This I attribute to pressure applied to Margaret Gillis of the Prohibited Importations Unit in Ottawa. The "pressure" was simply informing her that I would do my best to get media attention if the matter was not swiftly resolved. Because this happened on the tail end of the Rushdie fiasco, my tactic worked.

Following this event, abstention from harassment lasted until July when a seizure of William Burroughs titles at our Montreal sister store, L'Androgyny, signalled a renewed onslaught. Below I continue the list of seizures by date and title. With this group I have included copies of the actual seizure notices with my own brief commentary on each of the books in question. (see tab 3)

August 2, 1989

Meatmen Continues: An Anthology of Gay Comics Vol. 4
edited by Winston Leyland. Leyland Press, 1988.

More Meatmen: An Anthology of Gay Comics Vol. 2 edited by Winston
Leyland. Leyland Press, 1987.

And Still More Meatmen: An Anthology of Gay Comics Vol. 3 edited
by Winston Leyland. Leyland Press, 1988.

Hot Tricks: True Revelations & Strange Happenings Vol. 5
edited by John Dagion. 1988.

Humongous: True Gay Encounters Vol. 5 edited by Winston Leyland.
Leyland Press, 1989.

When I Was Eighteen: Homosexual Encounters from First Hand.
Leyland Press, 1988.

Ten & One-Half Inches & Other True Gay Encounters Vol. 6 edited
by Winston Leyland. Leyland Press, 1989.

August 3, 1989

Hard: True Gay Encounters Vol. 2 edited by Winston Leyland.
Leyland Press, 1987

When I Was Eighteen: First Hand Stories Vol. 5 Leyland Press,
1989.

Lust: True Gay Encounters Vol. 1 edited by Winston Leyland.
Leyland Press, 1986.

August 3, 1989

Humongous: True Gay Encounters Vol. 5 edited by Winston Leyland.
Leyland Press, 1989.

August 3, 1989

Meatmen Continues Vol. 4. edited by Winston Leyland.
Leyland Press, 1988.

August 3, 1989

More Meatmen: An Anthology of Gay Comics Vol. 2 edited by Winston
Leyland. Leyland Press, 1987.

And Still More Meatmen: An Anthology of Gay Comics Vol. 3 edited
by Winston Leyland. Leyland Press, 1988.

August 10, 1989

Fag Rag: Twelfth Anniversary Issue.

Boys In Blue by Phil Andros. Grey Fox Press, 1986.

Greek Ways by Phil Andros. Grey Fox Press, 1987.

Hot Tricks: True Revelations & Strange Happenings Vol. 5
edited by John Dagion. 1988.

And Still More Meatmen: An Anthology of Gay Comics Vol. 3
edited by Winston Leyland. Leyland Press, 1988.

Meatmen: An Anthology of Gay Comics Vol. 5 edited by Winston
Leyland. Leyland Press, 1989.

August 15, 1989

Arjun photos by Wolf Nikolas. Vis A Vis Verlag, 1986.

Berliner Jungs photos by Wolfram Mueller. Vis A Vis Verlag,
1989.

October 3, 1989

Oriental Guys # 4.

October 4, 1989

Sex Stop: True Revelations & Strange Happenings Vol. 3 edited by
John Dagion. 1988.

Hot Tricks: True Revelations & Strange Happenings Vol. 5
edited by John Dagion. Leyland Press, 1989.

October 4, 1989

Movie Star Confidential/Adventures of Harry Chess. by Mike Kuchar
and A Jay. Leyland Press, 1989.

Humongous: True Gay Encounters Vol.5 edited by Winston Leyland.
Leyland Press, 1989.

Hot Tricks: True Revelations & Strange Happenings Vol. 5 edited
by John Dagion. Leyland Press, 1989.

October 16, 1989

Bear (A magazine for older gay men)

October 24, 1989

Outlook National Lesbian & Gay Quarterly. No. 6 (Fall, 1989).

November 14, 1989

Playguy.

In Touch.

Advocate Men.

December 15, 1989

Meatmen: Anthology of Gay Comics Vol. 1 edited by Winston Leyland. Leyland Publications, 1989.

Orgasms: Homosexual Encounters from First Hand Vol. 2 edited by Winston Leyland. Leyland Press, 1987.

Singlehanded: Homosexual Encounters from First Hand Vol. 5 edited by Winston Leyland. Leyland Press, 1989.

Surfer Sex: Gay Experiences from Australia edited by R. Winter. Leyland Press, 1987.

February 6, 1990

Bike Cop by T. Hoban. Omnium Publishing, 1989.

Urban Aboriginals: A Celebration of Leathersexuality by Geoff Mains. Gay Sunshine Press, 1984.

For the last case (Feb. 6 above) we have not as yet received documentation. It involved a large shipment of books (113 titles) from the east coast distributor of small press books, the Inland Book Company, East Haven, Connecticut. About five times a year we order a substantial quantity of books from them--most are back list titles but many are new books which we are told about during a lengthy phone order with Inland. No titles previously seized were put on this order. I cannot afford many more losses of the magnitude suggested by the above listings and be in business much longer. Nevertheless, as a bookseller dedicated to offering a comprehensive selection to my community and as someone trying to make the right decisions in order to make my living, I of course order new titles in quantities suggested by the distributor's experience with other bookstores.

Such was the case with Bike Cop. It is the third novel by someone whose other works have sold well and have not as yet been banned. They are Runaway and The Green Hotel. In the same order, for example, were several similar novels--with more

graphic covers, dealing with intergenerational relationships (Getting It On: Rites of Passage: Homosexual Histories of 6 Heterosexual Boys by Dr. Joseph Winchester & Kim, My Beloved by Jens Eisenhardt), not to mention several rather explicitly sexual lesbian titles. I am constantly faced with a frustrating dilemma. Do I try to anticipate which books will cause trouble and simply not order them and avoid losing money; or, do I take a stand for my community and try to get as many books into the country as I can?

The title, Urban Aboriginals, is a book worthy of special note. It is the first of two books by Vancouver writer Geoff Mains who recently died of AIDS in October, 1989. His second work, a novel entitled Gentle Warriors came out only months before his death and is currently distributed in Canada through General Publishing. Urban Aboriginals is a serious non-fiction look at the leather/SM subculture of significance to many gay men. The book is a unique exploration of the lifestyle and motivation of those involved in the leather culture. Each chapter is followed by extensive references. Sadly, my attempts to interest the press in the banning of a book by a Canadian writer has fallen on deaf ears.

* * * *

This brief is an attempt to bring you up to date on events since the Joy of Gay Sex trial in 1987. I frankly have been discouraged by the lack of genuine concern from the larger literary community for what has been happening to me effectively since 1985. Even at the last International PEN Conference, I was disappointed with the lack of initiative on the part of the Canadian PEN organization to monitor our situation and keep abreast of events. Instead there was relative silence, broken only by Timothy Findley's attempts to raise the issue during various media interviews and my own persistence in bringing the issue to the attention of conference participants. When the PEN Conference began and I inquired about setting up a display of banned books I was initially met with a positive and sympathetic response. However, after spending an entire day getting my flyer and displays together, the same woman phoned me around 6pm to announce that Mr. Gibson had vetoed my participation. As some of you may remember, I decided to show up anyway. During the day I spent at the conference, I was able to pass out some 350 flyers and had many productive conversations.

Recently, at the prompting of members of the Canadian Committee Against Customs Censorship and lawyer Charles Campbell, I have turned again to the courts for some solution. In November, 1989, Mr. Campbell made an application at the Federal Court for an Order to compel the Deputy Minister of Revenue to make a determination on a series of titles held up over a year in the determination and appeals process. (I have included my defence of these books to the Deputy Minister at tab 5.) Mr.

Campbell was to argue that these delays were unconstitutional and that only the courts and not a bureaucracy should have the power to determine what is obscene and what is not. The day before the January, 1990, court date, determinations were made, prohibiting all titles including a Tom of Finland retrospective published to coincide with a major New York exhibition of his work. (See the Deputy Minister's letter of decision at tab 6.) I am continuing with the Federal Court application requesting damages for losses incurred over the past few years due to Customs seizures and lengthy delays. You will note by the letter at tab 7 that all of the books in this case, except for single sample copies of each title, have been 'accidentally' destroyed by Customs.

In addition, the Canadian Committee Against Customs Censorship has agreed to retain Mr. Campbell again on behalf of Glad Day in order to take a number of prohibited titles to the District Court in the hope of having Customs decisions reversed. (This strategy is outlined in the letter at tab 8.) All of this material has been banned because it depicts anal sex or some other aspect of gay sexuality which Customs has decided is "degrading". At the very least, we hope to set a strong enough precedent so that Customs will have to amend their guideline removing the anal sex provision. Optimally, since we think that the material we are going to litigate and the history of Customs seizures as described to you in this document clearly show that the system is unfair and arbitrarily restricts our freedom of speech in Canada, we would like a ruling that once again altogether disables the censoring provisions of the Customs Act. We are prepared to go to the Supreme Court if necessary but as usual much depends on how much support can be raised for this initiative both within the gay community and elsewhere.



Ottawa, May 15, 1985

Ottawa, le 15 mai 1985

SUBJECT

**INTERPRETIVE POLICY — ADMINISTRATION
OF TARIFF ITEM 99201-1**

This Memorandum outlines and explains the interpretation of tariff item 99201-1 of Schedule "C" of the *Customs Tariff*.

Législation

Tariff Item 99201-1 reads:

"... Books, printed paper, drawings, paintings, prints, photographs or representations of any kind

(a) of a treasonable or seditious character;

(b) that are deemed to be obscene under subsection 159(8) of the *Criminal Code* or

(c) that constitute hate propaganda within the meaning of subsection 281.3(8) of the *Criminal Code*."

N.B. Tariff Item 99201-1 will cease to have effect on June 30, 1986.

OBJET

**POLITIQUE D'INTERPRÉTATION — APPLICATION
DU NUMÉRO TARIFAIRE 99201-1**

Le présent mémorandum énonce et explique l'interprétation du numéro tarifaire 99201-1 de la Liste «C» du *Tarif des douanes*.

Législation

Le libellé du numéro tarifaire 99201-1 se lit comme suit:

«... Livres, imprimés, dessins, peintures, gravures, photographies ou reproductions de tout genre

a) de nature à fomenter la trahison ou la sédition;

b) réputés obscènes en vertu du paragraphe 159(8) du *Code criminel* ou

c) constituant de la propagande haineuse au sens du paragraphe 281.3(8) du *Code criminel*»

N.B. Le numéro tarifaire 99201-1 cesse d'être en vigueur le 30 juin 1986.

**GUIDELINES AND
GENERAL INFORMATION**

1. This tariff item covers books, printed paper, drawings, paintings, prints, photographs, movie film, videotapes, audiotapes and representations of any kind.

2. Materials which are deemed to be obscene under the *Criminal Code* are those of a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence.

3. Materials which are deemed to be hate propaganda under the *Criminal Code* are those which advocate or promote genocide or hatred against an identifiable group distinguished by colour, race, religion or ethnic origin.

**LIGNES DIRECTRICES ET
RENSEIGNEMENTS GÉNÉRAUX**

1. Ce numéro tarifaire englobe les livres, les imprimés, les dessins, les peintures, les gravures, les photographies, les films, les vidéo-cassettes, les bandes d'enregistrement sonore et les reproductions de tout genre.

2. Le matériel considéré comme obscène aux termes du *Code criminel* est celui dont la caractéristique dominante est qu'on y retrouve une exploitation indue du sexe ou, du sexe et de n'importe lequel des sujets suivants, à savoir, le crime, l'horreur, la cruauté et la violence.

3. Le matériel considéré comme de la propagande haineuse aux termes du *Code criminel* est celui qui appuie ou qui encourage le génocide ou l'incitation publique à la haine à l'endroit d'un groupe identifiable qui se distingue par la couleur, la race, la religion ou l'origine ethnique.

Revised June 1, 1986

Révisé 1 juin 1986

(7) The display or description of fecal matter, urine or the inducement of feces through enemas as part of sexual arousal.

(8) Portrayals or descriptions of the act of buggery (sodomy), including depictions or descriptions involving implements of all kinds.

(b) Materials depicting or describing sexual acts between children and/or juveniles, or between children and/or juveniles and adults, and portrayals or descriptions of children or juveniles in total or partial undress, alone or in the presence of other persons, and in which the context is even slightly sexually suggestive. Children and juveniles are persons actually or apparently under the age of eighteen.

(c) Materials depicting or describing sexual acts between members of the same family, other than between husband and wife. This includes portrayals and descriptions of any sexual activity among members of a family, whether or not they are genetically related (incest), except wife and husband, which generally appear to condone or otherwise endorse this behaviour for the purposes of sexual stimulation or pleasure.

(d) Materials depicting or describing sexual acts between human beings and animals. (Bestiality). This includes depictions and descriptions of bestiality, whether there is actual copulation with an animal or the animal is merely present and copulation is implied.

(e) Materials depicting or describing sexual acts between live persons and dead persons or dead animals (Necrophilia).

(f) Materials which advocate or promote genocide or hatred against an identifiable group distinguished by colour, race, religion or ethnic origin.

5. The decision to classify materials under tariff item 99201-1 will be communicated to the prospective importer/owner in writing and the goods will be detained by Customs. The prospective importer/owner will also be advised in writing of his/her statutory right to request a re-determination of the tariff classification of the goods under sections 60 and 63 of the *Customs Act*.

(7) L'étalage ou la description de matières fécales, d'urine ou le fait de provoquer la défécation par des lavements comme moyen d'excitation sexuelle.

(8) Des représentations ou des descriptions de l'acte de pédérastie (sodomie), y compris des représentations ou des descriptions impliquant des instruments de toutes sortes.

b) Le matériel représentant ou décrivant des actes sexuels entre des enfants et (ou) des adolescents, ou entre des enfants et (ou) des adolescents et des adultes, et les représentations et les descriptions d'enfants et (ou) d'adolescents complètement nus ou en partie, seuls ou en présence d'autres personnes et dans lesquelles le contexte est même légèrement suggestif au point de vue sexuel. Les enfants et les adolescents sont des personnes réellement ou apparemment âgées de moins de 18 ans.

c) Le matériel représentant ou décrivant des actes sexuels entre personnes de la même famille autres que mari et femme. Ceci inclut des représentations ou des descriptions de toute activité sexuelle entre les membres d'une famille, qu'ils soient ou non parents génétiquement (inceste), excepté entre mari et femme, ce qui en général semble excuser ou encore rendre plus convenable une telle conduite dans le but de procurer une excitation sexuelle ou un plaisir.

d) Le matériel représentant ou décrivant des actes sexuels entre humains et animaux (bestialité). Ceci inclut des représentations ou des descriptions de bestialité, qu'il s'agisse de copulation avec un animal ou du fait qu'un animal est simplement présent lorsqu'une copulation est suggérée.

e) Le matériel représentant ou décrivant des actes sexuels entre des personnes vivantes et des personnes mortes ou des animaux morts (nécrophilie).

f) Le matériel qui appuie ou qui encourage le génocide ou l'incitation publique à la haine à l'endroit d'un groupe identifiable qui se distingue par la couleur, la race, la religion ou l'origine ethnique.

5. La décision de classer du matériel en vertu du numéro tarifaire 99201-1 sera communiquée par écrit à l'importateur/propriétaire éventuel et les marchandises seront retenues par les Douanes. L'importateur/propriétaire éventuel sera aussi avisé par écrit de son droit de demander une nouvelle détermination de la classification tarifaire des marchandises en vertu des articles 60 et 63 de la *Loi sur les douanes*.

REFERENCES

EFFECTIVE DATE — April 3, 1985
ISSUING OFFICE — Tariff Programs
LEGISLATIVE REFERENCES — <i>Customs Tariff</i> , section 14 and Schedule "C", tariff item 99201-1 <i>Customs Act</i> , sections 60, 63 and 71 <i>Criminal Code</i> , sections 159(8) and 281.3(8)
HEADQUARTERS FILE — 4545-1
SUPERSEDED MEMORANDA "D" — Interim Memorandum D9-1-1, April 4, 1985
OTHER REFERENCES — N/A

SERVICES PROVIDED BY THE DEPARTMENT ARE AVAILABLE
IN BOTH OFFICIAL LANGUAGES.

THIS MEMORANDUM IS ISSUED UNDER THE AUTHORITY OF
THE DEPUTY MINISTER OF NATIONAL REVENUE, CUSTOMS
AND EXCISE.

Revised June 1, 1986

RÉFÉRENCES

DATE D'ENTRÉE EN VIGUEUR — le 3 avril 1985
BUREAU DE DIFFUSION — Programmes tarifaires
RÉFÉRENCES LÉGALES — <i>Tarif des douanes</i> , article 14 et Liste «C», numéro tarifaire 99201-1 <i>Loi sur les douanes</i> , articles 60, 63 et 71 <i>Code criminel</i> , articles 159(8) et 281.3(8)
DOSSIER DE L'ADMINISTRATION CENTRALE — 4545-1
CECI ANNULE LES MÉMORANDUMS «D» — Mémoire intérimaire D9-1-1, 4 avril 1985
AUTRES RÉFÉRENCES — s/o

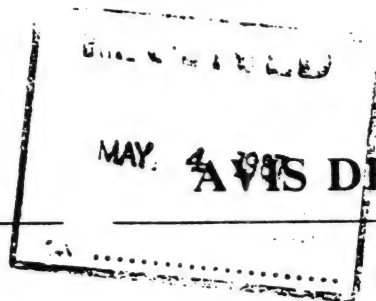
LES SERVICES FOURNIS PAR LE MINISTÈRE SONT DISPO-
NIBLES DANS LES DEUX LANGUES OFFICIELLES.

CE MÉMORANDUM A L'APPROBATION DU SOUS-MINISTRE DU
REVENU NATIONAL, DOUANES ET ACCISE.

Révisé 1 juin 1986



CUSTOMS NOTICE



AVIS DES DOUANES

April 13, 1987

le 13 avril 1987

SUBJECT

OBJET

ADMINISTRATION OF TARIFF ITEM
99201-1

APPLICATION DU NUMÉRO TARIFAIRE
99201-1

In light of the decision rendered in the District Court of Ontario on March 20, 1987, that the book entitled The Joy of Gay Sex is not considered obscene within the meaning of subsection 159(8) of the Criminal Code, the following should be considered when applying the guidelines for the interpretation of material subject to the prohibitory provisions of tariff item 99201-1:

Selon la décision rendue par la Cour fédérale de l'Ontario le 20 mars 1987, portant que le livre intitulé "The Joy of Gay Sex" n'est pas considéré comme étant obscène au sens du paragraphe 159(8) du Code criminel, les points qui suivent devraient être pris en considération lors de l'application des lignes directrices concernant l'interprétation du matériel qui est assujéti aux dispositions prohibitives du numéro tarifaire 99201-1:

a) Material which communicates in a rational and unsensational manner information about a sexual activity that is not unlawful is not to be prohibited entry. Such material may contain illustrations provided they are not prurient in nature. For example, material which communicates information about anal intercourse in such a manner may be released.

a) L'importation du matériel qui communique d'une manière rationnelle et non sensationnelle des renseignements à propos d'une activité sexuelle qui n'est pas contraire à la loi ne doit pas être interdite. Le matériel de ce genre peut contenir des images à condition qu'elles ne soient pas de nature lascive. Par exemple, le matériel qui communique des renseignements à propos des relations sexuelles anales de la façon mentionnée ci-dessus peut être dédouané.

b) For purposes of this notice, the activities described in section 2 and everything identified in section 4, except for 4 a)(8) and 4 (f), of the guidelines outlined in departmental Memorandum D9-1-1 are to be considered unlawful. The activities in section 4 a)(8) are unlawful unless between consenting adults in private.

b) Aux fins du présent avis, les activités décrites à l'article 2 et tout ce qui est identifié à l'article 4, sauf 4 a)(8) et 4 (f) des lignes directrices indiquées dans le Mémoire ministériel D9-1-1, doivent être considérés contraires à la loi. Les activités mentionnées à l'article 4 a)(8) sont contraires à la loi à moins qu'elles aient lieu dans l'intimité entre adultes consentants.

Canada



Revenue Canada
Customs and Excise

Revenu Canada
Douanes et Accise

Canada

NOTICE OF DETENTION/DETERMINATION
AVIS DE RETENUE OU DE CLASSEMENT TARIFAIRE

9956

Importer / Importateur

Glad Day Bookshop
598A Yonge St.
Toronto, Ont.
M4Y 1X3

Regional Control No.
N° de contrôle régional

Point of Entry
Bureau d'entrée

Point of Entry Control No.
N° de contrôle de bureau d'entrée

Date

Aug 2, 1989

PART A — NOTICE OF DETENTION

PARTIE A — AVIS DE RETENUE

The following goods have been detained for a determination of tariff classification. Once a determination has been made, you will be notified in writing.

Les marchandises désignées ci-après ont été retenues aux fins du classement tarifaire. Nous vous enverrons par écrit du classement effectué.

Description of goods / Désignation des marchandises

25 Magazines- " On Our Backs July-Aug 1989 "

Exporter / Exportateur

526 Castro San Francisco Ca. 94114

PART B — NOTICE OF DETERMINATION

PARTIE B — AVIS DE CLASSEMENT TARIFAIRE

The following goods have been examined and their importation into Canada is prohibited under the provisions of s. 114 of the Customs Tariff and code 9956 of Schedule VII.

Après examen des marchandises désignées ci-après, il a été établi que leur importation au Canada est prohibée en vertu de l'article 114 du Tarif des douanes et du code 9956 de l'annexe VII.

This represents a determination pursuant to section 58 of the Customs Act. Your rights respecting this determination are set out on the reverse of this form.

Cette décision constitue un classement aux termes de l'article 58 de la Loi sur les douanes. Vos droits concernant ce classement sont énoncés au verso de la présente formule.

Myra M. Moore Customs Officer / Officier des douanes
Comm. Spec. Title / Titre

Aug. 15/89 Date of determination / Date du classement

The following goods have been examined and their importation into Canada is admissible.

Après examen, il a été établi que les marchandises désignées ci-après sont admissibles au Canada.

15 magazines released and are being returned to the post office for delivery.

Please contact Canada Customs at the point of entry to make arrangements for the payment of duties on the admissible goods.

Veuillez communiquer avec les douanes canadiennes au bureau d'entrée afin de prendre des arrangements pour le paiement des droits.

Film	Type / Genre	Length / Longueur	Video tape / Ruban magnétoscopique	Format	Time / Durée
9956	<input type="checkbox"/> Book / Livre <input checked="" type="checkbox"/> Magazine <input type="checkbox"/> Comic <input type="checkbox"/> Bande dessinée	<input type="checkbox"/> Record / Disque <input type="checkbox"/> Audi <input type="checkbox"/> Play / Jeu	<input type="checkbox"/> Advertisement / Publicité	<input type="checkbox"/> Brochure / Dépliant	
Mode of Transport / Mode de transport Mail					
If not declared, mode of concealment / Si non déclarées, mode					
Classification (Memorandum D9-1-1) <input type="checkbox"/> a) Sex With Violence / Violence sexuelle <input type="checkbox"/> b) Child Sex / Pornographie enfantine					
Title / Titre					
Date of Appeal / Date d'appel					

SECT 1

SECT 2

SECT 3

SECT 4

SECT 5

SECT 6

SECT 7

SECT 8

SECT 9

SECT 10

SECT 11

SECT 12

SECT 13

SECT 14

SECT 15

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SECT 94

SECT 95

SECT 96

SECT 97

SECT 98

SECT 99

SECT 100

Continuation Sheet / Feuille supplémentaire

DEPARTMENT OF NATIONAL REVENUE — CUSTOMS AND EXCISE

MINISTÈRE DU REVENU NATIONAL — DOUANES ET ACCISE

K 27 (9/88)

2 — CONSIGNEE/CONSIGNATAIRE

J. Moldenhaw



Revenue Canada
Customs and Excise

Revenu Canada
Douanes et Accise

Canada

NOTICE OF DETENTION/DETERMINATION
AVIS DE RETENUE OU DE CLASSEMENT TARIFAIRE

Importer / Importateur

GLAD BAY BOOKSHOP
598 A Yonge St.
TORONTO, ONT

N4Y 1Z3

Regional Control No.
N° de contrôle régional

Point of Entry
Bureau d'entrée

Point of Entry Control No.
N° de contrôle du bureau d'entrée

Date

55634
CASE # 2263
410 FORT ERIE
FE-017
AUGUST 10, 1989

9956

PART A — NOTICE OF DETENTION

The following goods have been detained for a determination of tariff classification. Once a determination has been made, you will be notified in writing.

Description of goods / Désignation des marchandises

2 boxes containing 103 books. Titles as per attached listing.

Exporter / Exportateur

INLAND BOOK CO., 254 Bradley St. East Haven, CT., 06512

PARTIE A — AVIS DE RETENUE

Les marchandises désignées ci-après ont été retenues aux fins du classement tarifaire. Nous vous aviserons par écrit du classement effectif.

PART B — NOTICE OF DETERMINATION

The following goods have been examined and their importation into Canada is prohibited under the provisions of s. 714 of the Customs Tariff and code 9956 of Schedule VII.

10 TITLES AS PER ATTACHED LIST

This represents a determination pursuant to section 58 of the Customs Act. Your rights respecting this determination are set out on the reverse of this form.

Henry Peters
Customs Officer / Agent des douanes

Commodity Specialist
Titre / Titre

Nov 10, 1989
Date of Determination / Date du classement

PARTIE B — AVIS DE CLASSEMENT TARIFAIRE

Après examen des marchandises désignées ci-après, il a été établi que leur importation au Canada est interdite en vertu de l'article 114 du Tarif des douanes et du code 9956 de l'annexe VII.

Cette décision constitue un classement aux termes de l'article 58 de la Loi sur les douanes. Vos droits concernant ce classement sont énoncés au verso de la présente formule.

The following goods have been examined and their importation into Canada is admissible.

Après examen, il a été établi que les marchandises désignées ci-après sont admissibles au Canada.

Please contact Canada Customs at the point of entry to make arrangements for the payment of duties on the admissible goods.

Veuillez communiquer avec les douanes canadiennes au bureau d'entrée afin de prendre des arrangements pour le paiement des droits.

	Film	Type / Genre	Length / Longueur	Videotape Ruban magnétoscopique	Format	Time / Durée
SECTION 1	9956					
	<input type="checkbox"/> Book / Livre	<input type="checkbox"/> Record / Disque	<input type="checkbox"/> Advertisement / Publicité	<input type="checkbox"/> Brochure / Dépliant		
	<input type="checkbox"/> Magazine	<input type="checkbox"/> Audiotape / Bande auditive	<input type="checkbox"/> Photograph / Photographie	<input type="checkbox"/> Other / Autre		
	<input type="checkbox"/> Comic / Bande dessinée	<input type="checkbox"/> Playing Cards / Jeu de cartes	<input type="checkbox"/> Booklet / Livret			
	Mode of Transport / Mode de transport UPS - 2571 410 1800161			Were goods declared? / Les marchandises ont-elles été déclarées? <input checked="" type="checkbox"/> Yes / Oui <input type="checkbox"/> No / Non		
	If not declared, mode of concealment / Si non déclarées, mode de dissimulation					
SECTION 2	Classification (Memorandum D9-1.1)					
	<input checked="" type="checkbox"/> a) Sex With Violence / Violence sexuelle	<input checked="" type="checkbox"/> c) Incest / Inceste	<input checked="" type="checkbox"/> e) Necrophilia / Nérophilie	<input checked="" type="checkbox"/> g) Anal Penetration / Pénétration anale		
	<input checked="" type="checkbox"/> b) Child Sex / Pornographie enfantine	<input type="checkbox"/> d) Bestiality / Bestialité	<input type="checkbox"/> f) Hate Propaganda / Propagande haineuse	<input checked="" type="checkbox"/> h) Other / Autre	BONDAGE, DEGRADATION	
	Title / Titre			Quantity / Quantité		
	Date of Appeal / Date d'appel		Date sent to H.Q. / Date envoyée à I.A.C.		Disposition	

Continuation Sheet / Feuille supplémentaire

☐ Yes / Oui ☐ No / Non

FE 017



Titles	Quantity
✓ Fag Rag ⁶	6 each
✓ Meat ¹⁰	10 each
✓ Hot Tricks ¹⁰	10 each
✓ Humongous ⁵	5 each
✓ Meatmen Volume 5 ²⁵	25 each
✓ 10 1/2 Inches ¹⁰	10 each
✓ When I Was 18 ²⁰	20 each
✓ The Boys in Blue ⁵	5 each
✓ Greek Ways ²	2 each
✓ And Still More Meatmen Volume 3 ¹⁰	10 each

Take note of the dates on this seizure notice. The books were originally seized August 10, 1989. It took 3 full months for a "determination" by Mr. Henry Peters who finally found everything but necrophilia and hate in the books but nonetheless was not satisfied, adding "bondage" & "degradation" to the boxed check off list of areas prohibited by State sanctioned thought control. Subsequently the books seem to have been lost and it was only recently (Feb. 2, 1990) that their location was verified. This means that nearly 6 months have now past and the books have yet to reach the first level of appeal process.

Included among the banned books is a Boston based literary review Fag Rag, which I personally contributed to in 1982. It also includes work by writers John Mitzel, Charles Shively, Robert Peters, Maurice Kenny & Ron Schreiber.

Revenue Canada
Customs and ExciseRevenu Canada
Douanes et Accise

Canada

NOTICE OF DETENTION/DETERMINATION
AVIS DE RETENUE OU DE CLASSEMENT TARIFAIRE

Importer / Importateur

9956

Robert Blanks
Glad Day Bookshop Inc.
590A Yonge St.
Toronto Ontario
M4Y 1Z3

Regional Control No. N° de contrôle régional	3730-2/64T 2173
Point of Entry Bureau d'entrée	Imm 2 Mail
Point of Entry Control No. N° de contrôle du bureau d'entrée	CG 1703
Date	Oct 3, 1989

PART A - NOTICE OF DETENTION

PARTIE A - AVIS DE RETENUE

The following goods have been detained for a determination of tariff classification. Once a determination has been made, you will be notified in writing.

Les marchandises désignées ci-après ont été retenues aux fins du classement tarifaire. Nous vous aviserons par écrit du classement effectué.

Description of goods / Désignation des marchandises

25 Magazines- OG #4

Exporter / Exportateur

Int'l Wavelengths Inc 2215 R Market St. #236 San Fran Ca 94114

PART B - NOTICE OF DETERMINATION

PARTIE B - AVIS DE CLASSEMENT TARIFAIRE

The following goods have been examined and their importation into Canada is prohibited under the provisions of s. 114 of the Customs Tariff and code 9956 of Schedule VII.

Après examen des marchandises désignées ci-après, il a été établi que leur importation au Canada est prohibée en vertu de l'article 114 du Tarif des douanes et du code 9956 de l'annexe VII.

The magazine OG #4 is prohibited

This represents a determination pursuant to section 58 of the Customs Act. Your rights respecting this determination are set out on the reverse of this form.

Cette décision constitue un classement aux termes de l'article 58 de la Loi sur les douanes. Vos droits concernant ce classement sont énoncés au verso de la présente formule.

M. Maguire
Customs Officer / Agent des douanes*Comm. Spec.*
Title / Titre*Oct 18/89*
Date of Determination / Date du classement

The following goods have been examined and their importation is prohibited.

Note: OG, or Oriental Guys is a gay male magazine published 2 or 3 times a year in Australia. It is the single most important periodical for the Asian gay community. Similar to many North American magazines, it features articles on gay asian life as well as numerous colour photos of nude males. In a world dominated by caucasian images, OG is especially important to a large sector of our community.

J. Moldenhauer

Please contact Canada Customs at the point of entry to make arrangements for the payment of duties on the admissible goods.

Veuillez communiquer avec les douanes canadiennes au bureau d'entrée afin de prendre des arrangements pour le paiement des droits.

9956	Type / Genre Film	Length / Longueur mm	Video-tape Ruban magnétoscopique	Format	Time / Durée
<input checked="" type="checkbox"/> Book <input checked="" type="checkbox"/> Magazine <input type="checkbox"/> Comic Bande dessinée	<input type="checkbox"/> Record Disque 33 <input type="checkbox"/> Audiotape Bande auditive <input type="checkbox"/> Playing Cards Jeu de cartes	<input type="checkbox"/> Advertisement Publicité <input type="checkbox"/> Photograph <input type="checkbox"/> Booklet Livret	<input type="checkbox"/> Brochure Dépliant <input type="checkbox"/> Other Autre		
Mode of Transport / Mode de transport Mail	Were goods declared? Les marchandises ont-elles été déclarées? <input checked="" type="checkbox"/> Yes / Oui <input type="checkbox"/> No / Non				
If not declared, mode of concealment / Si non déclarées, mode de dissimulation					
Classification (Memorandum D9-1-1) <input type="checkbox"/> a) Sex With Violence Violence sexuelle <input type="checkbox"/> b) Child Sex Pornographie enfantine	<input type="checkbox"/> c) Incest Inceste <input type="checkbox"/> d) Bestiality Bestialité				
	<input type="checkbox"/> e) Necrophilia Nérophilie <input type="checkbox"/> f) Hate Propaganda Propagande haineuse <input checked="" type="checkbox"/> g) Anal Penetration Pénétration anale <input checked="" type="checkbox"/> h) Other Autre DEGRADATION				
Title / Titre					
Quantity / Quantité					
Date of Appeal / Date d'appel		Date sent to H.Q. / Date envoyée à l'A.C.		Disposition	

Continuation Sheet / Feuille supplémentaire

☐ Yes / Oui ☐ No / Non

Revenue Canada
Customs and ExciseRevenu Canada
Douanes et Accise

Canada

NOTICE OF DETENTION/DETERMINATION
AVIS DE RETENUE OU DE CLASSEMENT TARIFAIRE

Importer / Importateur

9956

Glad Day Bookshop
598A Yonge St.
Toronto Ontario
M4T 1Z3

Regional Control No. N° de contrôle régional	3730-2/64T 2454
Point of Entry Bureau d'entrée	Int'l Mail
Point of Entry Control No. N° de contrôle du bureau d'entrée	CO 2123
Date	Oct 24, 1989

PART A — NOTICE OF DETENTION

PARTIE A — AVIS DE RETENUE

The following goods have been detained for a determination of tariff classification. Once a determination has been made, you will be notified in writing.

Les marchandises désignées ci-après ont été retenues aux fins du classement tarifaire. Nous vous aviserons par écrit du classement effectif.

Description of goods / Désignation des marchandises

30 Magazines- Outlook National Lesbian & Gay Quarterly (MAGAZINE SENT FROM ARSENALS)

Exporter / Exportateur

Boston, Mass.

PART B — NOTICE OF DETERMINATION

PARTIE B — AVIS DE CLASSEMENT TARIFAIRE

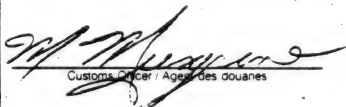
The following goods have been examined and their importation into Canada is prohibited under the provisions of s. 114 of the Customs Tariff and code 9956 of Schedule VII.

Après examen des marchandises désignées ci-après, il a été établi que leur importation au Canada est prohibée en vertu de l'article 114 du Tarif des douanes et du code 9956 de l'annexe VII.

30 magazines prohibited

This represents a determination pursuant to section 58 of the Customs Act. Your rights respecting this determination are set out on the reverse of this form.

Cette décision constitue un classement aux termes de l'article 58 de la Loi sur les douanes. Vos droits concernant ce classement sont énoncés au verso de la présente formule.


Customs Officer / Agent des douanesComm. Spec
Title / TitreNov 7/89
Date of Determination / Date du classement

The following goods have been examined and their importation into Canada is admissible.

Après examen, il a été établi que les marchandises désignées ci-après sont admissibles au Canada.

Please contact Canada Customs at the point of entry to make arrangements for the payment of duties on the admissible goods.

Veuillez communiquer avec les douanes canadiennes au bureau d'entrée afin de prendre des arrangements pour le paiement des droits.

Film	Type / Genre	Length / Longueur mm	Video-tape Ruban magnéto-électrique	Format	Time / Durée
9956					
<input type="checkbox"/> Book Livres	<input type="checkbox"/> Record Disque		<input type="checkbox"/> Advertisement Publicité	<input type="checkbox"/> Brochure Dépliant	
<input checked="" type="checkbox"/> Magazine	<input type="checkbox"/> Audiotape Bande auditive		<input type="checkbox"/> Photograph Photographie	<input type="checkbox"/> Other Autre	
<input type="checkbox"/> Comic Bande dessinée	<input type="checkbox"/> Playing Cards Jeu de cartes		<input type="checkbox"/> Booklet Livret		
Mode of Transport / Mode de transport Mail			Were goods declared? Les marchandises ont-elles été déclarées? <input checked="" type="checkbox"/> Yes Oui <input type="checkbox"/> No Non		
If not declared, mode of concealment / Si non déclarées, mode de dissimulation					
Classification (Memorandum D9-1-1)					
<input type="checkbox"/> a) Sex With Violence Violence sexuelle	<input checked="" type="checkbox"/> c) Incest Inceste		<input type="checkbox"/> e) Necrophilia Nécrophilie	<input type="checkbox"/> g) Anal Penetration Pénétration anale	
<input type="checkbox"/> b) Child Sex Pornographie enfantine	<input type="checkbox"/> d) Bestiality Bestialité		<input type="checkbox"/> f) Hate Propaganda Propagande haineuse	<input type="checkbox"/> h) Other Autre	
Title / Titre					Quantity / Quantité
Date of Appeal / Date d'appel		Date sent to H.Q. / Date envoyée à l'A.C.		Disposition	

Continuation Sheet / Feuille supplémentaire

☐ Yes / Oui ☐ No / Non



Revenue Canada
Customs and Excise

Revenu Canada
Douanes et Accise

4545-1 (R.R.)

Glad Day Bookshop
598A Yonge Street
Toronto, Ontario
M4Y 1Z3

Your file Votre référence

Our file Notre référence

T.P.A. Toronto Region
P. O. Box 10 Stn. A
Toronto, Ontario
M5W 1A3

February 1, 1990

Attention: Jearld E. Moldenauer:

Dear Sir:

This refers to B2 0000050320191-0 re-determination request to appeal the decision of File No. 3730-2/64T 2454 which prohibited 30 magazines titled, "Outlook National Lesbian and Gay Quarterly" No. 6, Fall 1989 issue.

The magazine has been reviewed, and "Outlook National Lesbian and Gay Quarterly No. 6, Fall 1989" issue has been deemed not to fall under the prohibitory provisions of Schedule VII, but rather under the regular provisions of Schedule I of the Customs Tariff. In this instance, the classification number for this magazine is 4902900020., free rate of duty, and exempt federal sales tax.

This represents a decision and subsection 60 (1) (A) of the Customs Act.

Should you require any additional information, please do not hesitate to contact me at 973-6884.

Yours truly,

Note: Outlook is a quarterly journal from LA. It was founded 2 years ago to provide a national forum in the U.S. for serious articles about aesthetic & sexual political topics of importance to the gay/lesbian movement.

R. Ryan
Tariff and Values Administrator
Toronto Region.

c.c. CIMDSO Jim Corbett,
Enforcement - Arsenals

c.c. Commodity Specialist
P.I.U. Unit V.

Outlook was seized on October 24, 1989. It was "freed" over three months later on Feb. 1, 1990. We still have not received the magazines and although I expect that they will arrive shortly, apart from considering the issues of democracy as practiced in Canada, what am I, as a businessman - as someone not only trying to serve my community but also attempting to make my and four others livelihoods through the bookstore supposed to do with these out-dated magazines? The bill had to be paid 2 months ago. My options are to return them at further expense and wait for them to seize the next issue.

J. Moldenauer

Canada

Department
of National Revenue
(Customs and Excise)

Ministère
du Revenu national
(Douanes et Accise)



Revenue Canada
Customs and Excise

Revenu Canada
Douanes et Accise

Canada

NOTICE OF DETENTION/DETERMINATION
AVIS DE RETENUE OU DE CLASSEMENT TARIFAIRE

9956

Importer / Importateur

Glad Day Bookshop
588A Yonge St.
Toronto, Ont.
M4Y 1Z3

Regional Control No. N° de contrôle régional	3730-2 / 64T 2772
Point of Entry Bureau d'entrée	Intl Mail
Point of Entry Control No. N° de contrôle du bureau d'entrée	CO 2399
Date	Nov 14, 1989

PART A — NOTICE OF DETENTION

PARTIE A — AVIS DE RETENUE

The following goods have been detained for a determination of tariff classification. Once a determination has been made, you will be notified in writing.

Les marchandises désignées ci-après ont été retenues aux fins du classement tarifaire. Nous vous aviserons par écrit du classement effectué.

Description of goods / Désignation des marchandises

15 Magazines - 5 Playguy
5 In Touch
5 Advocate Men

Exporter / Exportateur

Glad Day Bookshop 673 Boylston St. Boston Ma 02116

PART B — NOTICE OF DETERMINATION

PARTIE B — AVIS DE CLASSEMENT TARIFAIRE

The following goods have been examined and their importation into Canada is prohibited under the provisions of s. 114 of the Customs Tariff and code 9956 of Schedule VII.

Après examen des marchandises désignées ci-après, il a été établi que leur importation au Canada est prohibée en vertu de l'article 114 du Tarif des douanes et du code 9956 de l'annexe VII.

15 magazines prohibited.

This represents a determination pursuant to section 58 of the Customs Act. Your rights respecting this determination are set out on the reverse of this form.

Cette décision constitue un classement aux termes de l'article 58 de la Loi sur les douanes. Vos droits concernant ce classement sont énoncés au verso de la présente formule.

M. J. Mordue
Customs Officer / Agent des douanes

Comm. Spec.
Title / Titre

Nov. 20/89
Date of Determination / Date du classement

The following goods have been examined and their importation into Canada is admissible.

Après examen, il a été établi que les marchandises désignées ci-après sont admissibles au Canada.

Note: Playguy, In Touch, and Advocate Men are three typical gay male monthly magazines from the U.S. They are "constructed" to find their way onto magazine shelves in corner stores all over the U.S. The heterosexual equivalent would be Playboy. Starting in 1985-86 with the introduction of the D9-1-1, all gay monthlies have been subjected to a pre-censorship process, unique in western democracies. These three issues were imported in their uncensored U.S. editions to challenge this peculiar & insidious Canadian practice.

J. Moldenhauer

SECTION 1	9956	Record / Disque	Advertisement / Publicité	Brochure / Dépliant
	<input checked="" type="checkbox"/> Magazine	<input type="checkbox"/> Audiotape	<input type="checkbox"/> Photograph	<input type="checkbox"/> Other / Autre
	<input type="checkbox"/> Comic	<input type="checkbox"/> Playing Cards	<input type="checkbox"/> Booklet	
	<input type="checkbox"/> Bande dessinée	<input type="checkbox"/> Jeu de cartes	<input type="checkbox"/> Livret	
	Mode of Transport / Mode de transport	Were goods declared? / Les marchandises ont-elles été déclarées?		
	Mail	<input type="checkbox"/> Yes / Oui <input checked="" type="checkbox"/> No / Non		
	If not declared, mode of concealment / Si non déclarées, mode de dissimulation			
	In Parcel			
SECTION 2	Classification (Memorandum D9-1-1)			
	<input checked="" type="checkbox"/> a) Sex With Violence / Violence sexuelle	<input type="checkbox"/> c) Incest / Inceste	<input type="checkbox"/> e) Necrophilia / Nérophilie	<input checked="" type="checkbox"/> g) Anal Penetration / Pénétration anale
	<input type="checkbox"/> b) Child Sex / Pornographie enfantine	<input type="checkbox"/> d) Bestiality / Bestialité	<input type="checkbox"/> f) Hate Propaganda / Propagande haineuse	<input checked="" type="checkbox"/> h) Other / Autre
	Quantity / Quantité			
	Date of Appeal / Date d'appel	Date sent to H.Q. / Date envoyé à l'A.C.	Disposition	

Continuation Sheet / Feuille supplémentaire

☐ Yes / Oui ☐ No / Non



Revenue Canada
Customs and Excise

Revenu Canada
Douanes et Accise

Canada

NOTICE OF DETENTION/DETERMINATION
AVIS DE RETENUE OU DE CLASSEMENT TARIFAIRE

9956

Importer / Importateur

RUSSELL ARMSTRONG

P.O. Box 221 Station F

Quebec, Que.

H7X 2X7

Regional Control No.
N° de contrôle régional

37302/6453195

Point of Entry
Bureau d'entrée

Int'l Mail

Point of Entry Control No.
N° de contrôle du bureau d'entrée

03 7732

Date

Dec 15, 1989

PART A — NOTICE OF DETENTION

PARTIE A — AVIS DE RETENUE

The following goods have been detained for a determination of tariff classification. Once a determination has been made, you will be notified in writing.

Les marchandises désignées ci-après ont été retenues aux fins du classement tarifaire. Nous vous aviserons par écrit du classement effectué.

Description of goods / Désignation des marchandises

30 Books - 10 Singlehanded
10 Orgasms Volume two
5 Surfer Sex
5 Mastmen

*Only 4 books sent to P.I.U.
FROM ST. DOG each*

Exporter / Exportateur

Bookpeople 2929 Fifth St Berkeley CA 94710

PART B — NOTICE OF DETERMINATION

PARTIE B — AVIS DE CLASSEMENT TARIFAIRE

The following goods have been examined and their importation into Canada is prohibited under the provisions of s. 114 of the Customs Tariff and code 9956 of Schedule VII.

Après examen des marchandises désignées ci-après, il a été établi que leur importation au Canada est prohibée en vertu de l'article 114 du Tarif des douanes et du code 9956 de l'annexe VII.

4 books held.

This represents a determination pursuant to section 58 of the Customs Act. Your rights respecting this determination are set out on the reverse of this form.

Cette décision constitue un classement aux termes de l'article 58 de la Loi sur les douanes. Vos droits concernant ce classement sont énoncés au verso de la présente formule.

[Signature]
Customs Officer / Agent des douanes

C.S.

Title / Titre

Jan. 23/90
Date of Determination / Date du classement

The following goods have been examined and their importation into Canada is admissible.

Après examen, il a été établi que les marchandises désignées ci-après sont admissibles au Canada.

Please contact
ment of duties

An ironic twist about the banning of the various First Hand anthologies: Hot Acts; Orgasms; Hot Acts; Singlehanded & When I Was Eighteen. is that the actual monthly magazines stories taken for use in the collections are Printed in Canada! Each month we receive the digest format magazine First Hand direct from the printer in Beauce, P.Q., yet when the stories are collected once a year into the anthology series by the California based publisher, they are banned upon re-entry into Canada.

ee afin de prendre

S E C T I O N 1	9956	<input checked="" type="checkbox"/> Book Livre	<input type="checkbox"/> Record Disque	<input type="checkbox"/> Advertisement Publicité	<input type="checkbox"/> Brochure Dépliant
	<input type="checkbox"/> Magazine Magazine	<input type="checkbox"/> Audiotape Bande auditive	<input type="checkbox"/> Photograph Photographie	<input type="checkbox"/> Other Autre	
	<input type="checkbox"/> Comic Bande dessinée	<input type="checkbox"/> Playing Cards Jeu de cartes	<input type="checkbox"/> Booklet Livret		
	Mode of Transport / Mode de transport Mail		Were goods declared? Les marchandises ont-elles été déclarées? <input checked="" type="checkbox"/> Yes Oui <input type="checkbox"/> No Non		
	If not declared, mode of concealment / Si non déclarées, mode de dissimulation				
S E C T I O N 2	Classification (Memorandum D9-1-1)				
	<input type="checkbox"/> a) Sex With Violence Violence sexuelle	<input type="checkbox"/> c) Incest Inceste	<input type="checkbox"/> e) Necrophilia Nécrophilie	<input checked="" type="checkbox"/> g) Anal Penetration Pénétration anale	
	<input type="checkbox"/> b) Child Sex Pornographie infantile	<input type="checkbox"/> d) Bestiality Bestialité	<input type="checkbox"/> f) Hate Propaganda Propagande haineuse	<input type="checkbox"/> h) Other Autre	
	Title / Titre				Quantity / Quantité
	Date of Appeal / Date d'appel	Date sent to H.Q. / Date envoyée à l'A.C.	Disposition		

Continuation Sheet / Feuille supplémentaire

☐ Yes / Oui ☐ No / Non

Customs' power to ban infuriates book world

By Elaine Carey Toronto Star

In the first days after Iran's death sentence, no other democratic country turned its back on Salman Rushdie the way Canada did.

Britain, the United States, France and West Germany publicly condemned Ayatollah Ruhollah Khomeini's call for Rushdie's assassination last week. But Revenue Canada ordered his book, *The Satanic Verses*, halted at the border while it checked it for hate literature.

Canada joined South Africa as the only non-Muslim nation to attempt to muzzle the book.

"That the government would choose to have a petty little bureaucratic exercise like this at the time when someone's life is being threatened is something we as Canadians should be ashamed of," said Marian Hebb, counsel for the Writers' Union of Canada. "This procedure should not happen to the worst trash, let alone a widely acclaimed book. It is ludicrous."

Two days later, the ban was lifted when Revenue Minister Otto Jelinek declared the book did not fit the Criminal Code definition of hate literature.

But the whole episode left a nasty taste in the mouths of many Canadians — especially coming as it did during Freedom to Read Week.

RIGHTS ASSUMED

"Most Canadians don't realize what's going on," said Jearld Moldenhauer, owner of the Glad Day Bookshop on Yonge St., who regularly has his gay and lesbian literature seized by Canada Customs. "They know they have a Charter of Rights and they assume they have all these rights. They watch U.S. television and they don't realize the power of customs (officers). Hitler at least had the decency to burn these things in the public square so people could see what was happening."

In 1985, the federal Court of Appeal struck down as unconstitutional the tariff code provisions that gave customs officials the power to seize any goods they deemed to be "immoral and indecent." It ruled the provision was an unreasonable limitation on freedom of speech guaranteed in the Charter of Rights and Freedoms.

But two weeks later, Ottawa brought in a new tariff code that replaced "immoral and indecent" with specific references to the criminal code definitions of obscenity, hate propaganda, treason and sedition.

Now, any Revenue Canada customs agent can stop at the border any book, magazine, pamphlet, drawing or audio or video cassette that appears to violate those sections of the criminal code. Two years ago, Ottawa issued an eight-page "interpretative memorandum" setting out the guidelines to be used in making that determination.

The customs officers can act on their own in the routine business of examining book shipments. They can also act on the basis of government intelligence or on complaints from the public — as was the case with Rushdie's book. A Muslim group complained to Ottawa that the book constituted

Bureaucratic exercise should make Canadians ashamed, writers say



DISTINGUISHED COMPANY: Salman Rushdie (far right) is only the most recent distinguished author to come under the purview of Canada Customs agents. In the past, works by (from left) Jean Genet, Oscar Wilde and Quentin Crisp have been seized, along with classical Greek poetry and a medical film on masturbation.

hate literature.

As well, publishers routinely submit a copy of a book or magazine to Revenue Canada asking for a review in advance of importation if they suspect there might be a problem, said Margaret Gillis, manager of Revenue Canada's prohibited importations unit.

Almost all the hate propaganda is sent to head office in Ottawa where legal authorities make the ultimate determination, she said.

Customs officers never search travellers' luggage for obscene paperbacks or hate literature, she said, because they haven't got time. And frivolous complaints from the public would not be investigated.

"We wouldn't look at *Bambi* if we were asked to," she said. "But the Rushdie book was of great concern to the Muslim community. They got the same response as any other group would."

CAN TAKE YEARS

No charges are ever laid. The goods are simply not allowed in. The importer can appeal that decision — first to the head customs officer at the border crossing, then to the deputy minister of revenue's office in Ottawa and finally to the courts.

But the whole process can take months — even years — and meanwhile the bookseller has had to pay for the shipment that is tied up at the border. And appealing to court costs money.

"It gives discretion to people who have no ability to make these kinds of judgments," said Malcolm Lester, president of Lester & Orpen Dennys publishers. "On what basis do they stop a Salman Rushdie and let a skin magazine into the country? It just shows the absurdity of the law."

Last year, customs officials in Ottawa reviewed 2,650 items for obscenity, banned 13.6 per cent of them and al-

lowed 86.4 per cent. Another 825 items were reviewed for hate propaganda and 78 per cent were prohibited.

Most years, about 4,000 items are reviewed, said Gillis, about 90 per cent of them for obscenity and 10 per cent for hate propaganda. No one has ever found anything treasonable or seditious.

But the list of what they have seized at the border includes: a six-minute film on male masturbation destined for the University of Alberta medical school; *The Joy of Gay Sex*, which sold for a decade in Canadian bookstores before customs declared it obscene; books by Oscar Wilde, Jean Genet and Quentin Crisp; and classical Greek poetry.

Under hate literature, customs has condemned a long list of neo-Nazi and white supremacist books, pamphlets, magazines, newspapers and audio-cassettes — including interviews by the *Tomorrow Show* and talk-show host Phil Donahue with Bill Wilkinson, former Imperial Wizard of the Ku Klux Klan.

The University of Alberta went to court in 1983 to get its masturbation film back. A county court judge ruled it was made for "commendable moral and educational purposes" and was not pornographic.

Moldenhauer also went to court to get *The Joy of Gay Sex* back in circulation, hoping to get a ruling that the tariff code guideline that specifies that "depictions or descriptions of anal penetration" are obscene under the Criminal Code is unconstitutional.

Moldenhauer won only a partial victory. District Court Judge Bruce Hawkins ruled in 1987 that the book was not obscene, stating: "To write about homosexual practices without dealing with anal intercourse would be equivalent to writing a history of music and omitting Mozart." But he did not deal with the issue of constitutionality.

The whole effort cost Moldenhauer



AP PHOTO

\$15,000 in legal expenses and more of his books are now being seized than ever before. The "anal penetration" section remains in the customs guidelines.

"The way things work, the onus falls on the book owner to defend the right of Canadians to read something they seize," he said. "The whole thing is backwards. The way it should work is that we have the freedom to read the books and the government can lay a charge if it decides the book is obscene or hate literature."

Ironically, many of the books that customs seizes from Moldenhauer's shipments are readily available in other stores, he said. "They just don't investigate Coles."

SELF-CENSORSHIP

During the busy Christmas season, Canada Customs stopped two large shipments of books destined for Moldenhauer's store. Everything in one lot was eventually cleared but not until Jan. 8. Three books in the second lot were prohibited and the rest were held up until Jan. 8.

"They had had their effect in hurting me," he said. "The terror is there. The message is to internalize the terror so you eventually become your own censor. I refuse to. I have been forced to feel like a criminal for the past three years."

That is the ultimate outcome of government censorship, said Alan Borovoy, chief counsel for the Canadian Civil Liberties Association.

"Official actions have a way of making people concerned lest they be targeted," he said. "That's why it's important not to be unduly consoled by the fact there was eventually an acquittal or no charges were laid. Holding things up can produce some serious consequences. That can be an awful

harassment."

Borovoy said there is "no adequate justification for the kind of power exercised by Canada Customs."

The Book and Periodical Development Council has long argued that issues of obscenity and hate literature should be decided in the courts — not by an untrained customs official at the border, said spokesman Nancy Fleming.

A book deemed to be obscene could be the subject of an obscenity charge and it would then be up to the courts to rule on what constitutes community standards, she said.

Customs powers could be curtailed in a roundabout way if the hate-propaganda section of the Criminal Code is struck down. The Supreme Court of Canada has reserved judgment on whether to hear two major constitutional cases involving the hate law — one from Alberta, where the courts have ruled the law is unconstitutional, and one from Ontario, where the courts ruled it is constitutional.

The anti-hate law was triggered by the actions of a small group of neo-Nazis putting out anti-Semitic and anti-black material in the late 1960s, Borovoy said. "But when you use words as vague as this law uses you run the risk of targeting material it was never intended to."

If nothing else, the Rushdie affair gave new meaning to Freedom to Read Week, said Fleming of the Book and Periodical Development Council, which sponsors it.

It's made the normal events in Canada, like pressure groups trying to get libraries to remove tomes they consider offensive, seem trivial by comparison, she said.

"It really brought home to us that while we have all kinds of problems, we have never faced anything like this before."

Verses has received widespread media coverage.

A press release/statement circulated by Jearld Moldenhauer, who operates the best-known gay bookstore in Toronto, Glad Day Bookshop, noted that since the Government introduced its Memorandum D9-1-1, well over 100 titles (books and magazines) have been prohibited entry into Canada.

The books prohibited include such international bestsellers as William Burroughs' *Naked Lunch*, declared obscene and seized in July by customs in Montreal, Moldenhauer's statement said. Also detained were Burroughs' *Interzone* and *The Soft Machine*. Media attention later resulted in the release of the books.

"In Vancouver, a massive seizure involving many different titles occurred in May. At Glad Day we had 16 different titles seized during August. Among those banned or still under detention are two by the writer Phil Andros, the various gay comic anthologies, and the gay male literary magazine, *Fag Rag*."

"Glad Day Bookshop, along with two other independent bookstores specializ-

ing in gay and lesbian literature, L'Androgyny, Montreal, and Little Sisters, Vancouver, have been the primary targets for the censorship practices of the Conservative government . . ."

"Canada's censorship is arbitrary and unprincipled. When a famous title is threatened, the government retreats in response to media pressure. However, the same cannot be said for the works of less-established authors. It is precisely these works which most need protection. We call on the members of PEN International to ask the Canadian government to rescind Memorandum D9-1-1 and to revise areas of the Criminal Code of Canada which violate the Charter of Rights and Freedoms."

In January, 1986, Glad Day took Canada Customs to court over their banning of *The Joy of Gay Sex* by Edmund White and Charles Silverstein. Although the store won the case (including \$14,000 in court costs), the government chose not to remove the controversial regulation which allows it to deny entry to books and magazines on an ad hoc basis, solely at the recommendation of the customs personnel at the border. ■

Bookseller Protests Ongoing Censorship

A bookseller used the occasion of the 54th International PEN Congress, held in Toronto Sept. 23-27, to remind those in attendance that book and magazine censorship practices by Canada Customs are ongoing, although only the (temporarily) prohibited entry of *Satanic*

Canadian Censorship After Rushdie:

The Focus is Gay

by John Hammond

Last February, when other democratic countries were rallying to defend Salman Rushdie's right to satirize Muslim beliefs, a Canadian customs inspector applied his agency's usual response to controversial material and confiscated a shipment containing copies of *Satanic Verses*, putting Canada on record, if only for a couple of days, as the one Western democracy to ban the book, a position that was quickly reversed when it provoked an embarrassing international furor. The incident turned out to be a respite for gay and lesbian bookstores in Canada, because it resulted in a retreat by the customs inspectors and for a few months, under public scrutiny, few shipments were held up at the border.

With the fall shopping season, however, the guardians of Canadian morality are back in business, and shipments of books and magazines to the three gay-identified book dealers in Canada, L'Androgynie in Montreal, Glad Day in Toronto, and Little Sisters in Vancouver, are once again in jeopardy. All three dealers report recent problems with customs and Glad Day owner Jearld Moldenhauer is concerned that much of his Christmas stock may be

held up until after the shopping season is over, as it was last year, a severe hardship for the store.

Homosexuality is not illegal in Canada and the country, as a legacy of the liberal Trudeau government, has a Charter of Rights and Freedoms that guarantees free speech, but there is very little case law supporting that right and many questions of censorship have never been tested in court. The conservative government of Brian Mulroney is enforcing laws that ban works describing "sodomy" and sexual "degradation" and one government memorandum used by customs inspectors defines sodomy as "anal sex." Individual customs inspectors determine whether an item should be held for further review of its pornographic content, and such review can take several weeks. Worse, if one item in a shipment is held for review, the entire shipment is held back until a decision is made to confiscate or release the single questionable item.

Books that have been confiscated include works by Anne Rice, John Preston, and Pat Califia; magazines include *The Advocate*, *On Our Backs*, and, in previous years, the *Native* and *Christopher Street*. When a book is confiscated, usually it is not returned to the sender and the bookstore has to pay for it.

Moldenhauer reports that the harass-

ment is more likely to occur in English-speaking provinces than in Quebec, but unfortunately even shipments headed for Montreal usually cross the border in Ontario. Lawrence Boyle of L'Androgynie Bookstore reports in a recent *Lambda Rising* article that a couple of years ago books by Jean Genet, Yves Navarre, and Andre Gide were held up for six weeks until a French-speaking customs inspector could be found to read them.

A more recent skirmish involved a shipment of William Burroughs novels. Boyle discovered that copies of *Naked Lunch*, *Inferno*, and *The Soft Machine* were about to be confiscated and only got them released after he made it clear that a ban on Burroughs was likely to lead to another international scandal. Moldenhauer and Boyle cite such incidents as evidence that gay and lesbian stores are singled out for harassment, since Burroughs's works are freely imported and readily available in general bookstores. "While officials deny targeting specific bookstores," Boyle writes, "it is obvious that [gay and lesbian stores] are being systematically harassed."

Moldenhauer reports that he has attempted, without much success, to interest the Society of Poets, Editors, Essayists and Novelists (P.E.N.) in the problem. Although the Canadian branch of P.E.N. made a point

of assuring that minorities, including gay people, would be represented at the annual international P.E.N. conference, held in Toronto last month, he reports being invited, then disinvited, by the outgoing president of Canadian P.E.N., Greame Gibson, to speak about the problems with customs. Instead Moldenhauer set up a display of banned books and distributed flyers. Moldenhauer notes that the new president of Canadian P.E.N., June Callwood, has been supportive on gay issues and is the only high P.E.N. official who has visited the Glad Day store, and hopes her regime will become more responsive to the problem. ■



Graeme Gibson

10
April 7, 1989

The Deputy Minister of National Revenue & Excise
1 Front Street West, 3rd Floor
P.O. Box 10, Station A
Toronto, Ontario
MSW 1A3

Re: Files #3730-2/64T 3011; 2986; 2972; 2963; 2962

Dear Deputy Minister:

There are a number of points which need to be made concerning the gay/lesbian community's perspective on the seizures and banning of books such as the titles involved above. These perspectives have in common that they reflect ways of looking at literature which deals with our sexuality that someone outside our community might not appreciate, at least until taking the time to consider these arguments. It is with this in mind, together with the hope that your exercise of power incorporates a sincere appreciation for genuine cultural diversity in Canada, that I make this appeal on behalf of my bookshop and my community. A government interested in being sensitive to its pluralistic nature would be wise to consider the unique sociological aspects of the gay and lesbian community rather than to continue its present approach.

Gay & lesbian people constitute a distinct social minority in Canadian society, comprising somewhere around 10% of the population. As a part of the Canadian social fabric, our situation is similar to many racial, ethnic or religious minorities, except of course, we are defined by our sexuality. One should understand that "sexuality" is meant to encompass our emotional, physical and aesthetic relationships with each other and the world.

The gay & lesbian community is, at least on a visible level, a relatively new development in modern western societies. Viewed within the brief context of the past twenty years we have come a fair distance in terms of both legal reforms and in the construction of a genuine community with its own values, mores and tangible cultural institutions such as a media network and myriad of social & political organizations. As a social minority we are very much still in the position of realizing our long suppressed identity (somewhat analogous, if I may suggest, to the present & actively ongoing quest for a distinct Canadian identity) and asserting our rights as members of a group which has often been subjected to various forms of violence by both the State & society. These manifestations of homophobia take many forms, the harassment and persecution by Canada Customs being our present focal point.

As a group made up of individuals who realize their gay or lesbian identity only after growing up submerged in an aggressive & essentially anti-gay heterosexual culture, we rely on media (books, periodicals, films) to both explore our emerging identity and to make connections within our community. We are unlike any other social group in this special relationship to our literature & visual arts. One might even go so far as to conjecture that printed material has and continues to play an inestimably major role in the creation & evolution of our particular community.

It is for this very reason which I started both the Glad Day Bookshop in 1970 and the now defunct (after 15 years) The Body Politic news journal. And it is for this same reason that, in 1986, I characterized the attacks on gay and lesbian literature by Canada Customs as a form of "cultural genocide".

It is especially ironic that a government which enacted laws against "hate literature" perpetuates its own form of "hate literature" within the infamous Memorandum D9-1-1, highlighted by the reference to "anal sex" but including several other categories of "forbidden thought" which through censorship militate ignorance, prejudice and silence on a number of areas of human sexual experience. For homosexual acts to be legal in a country and for governments, both provincial and municipal, to have enacted various measures to protect the rights of the gay & lesbian population, while the current federal government institutes and upholds an internal memorandum (not legislated) against the citizen's right to read about homosexual acts is a simple unequivocal form of hate mongering of the worst sort.

The government poses as the protector of freedom while violating the rights of citizens it should be protecting. Put another way, instead of defending the weakest members of society from the prejudices of the masses, the government itself sets the tone of intolerance and oppression as perpetrator of its own instrument of hate, D9-1-1. It would seem to provide a classic example of a misuse of power by the State and bolster the argument that the State should not exercise control over any area of freedom of speech in a society which purports to be a true democracy.

Literature such as any of the Gay Sunshine Press Publications or Leyland Publishers are published by our own community's oldest publishers and distributed to literally thousands of North American bookstores by the most reputable small press book distributors in the United States. These titles all deal with matters of interest to the gay male community -- our sexuality and relationships. Some handle these topics in a playful & simply pleasure oriented manner while others explore ideas and situations encountered in gay life.

The gay comic anthologies and works by Tom of Finland represent the creative achievements of individuals who are major figures in the cultural backbone of our community. Tom of Finland is the senior figure in this school of art and has recently been celebrated by shows in American and European art galleries, as well as the publication of a 40 year retrospective of his work. The other artists work has all appeared previously in such important gay publications as the Advocate, Bay Area Reporter, and In Touch. Any examination of the collections would, of course, show the reader that matters of sexuality and sexual politics are dealt with by comic artists in an essentially playful manner which is capable of providing insights into human situations which other forms of communication may not achieve so effectively.

All play a role in helping gay men to better realize the nature of our sexuality and to provide an outlet for many people who are not able, for one reason or another (a primary one being age, followed by things such as physical handicaps) to interact with other members of their community. Of course many people enjoy such literature simply as a part of their varied programme of reading.

This goes without stating the most obvious of all "uses" of erotic literature (and videos, for that matter) within the gay male community: the reduction of sexual encounters whereby the AIDS virus is transmitted from one individual to another. It should be obvious to any rational caring individual in society (including government bureaucrats who are "just following orders") that activities which reduces the probability of individuals contracting the deadly disease -- and thereby reduces human suffering and loss -- not to mention enormous expense to the social welfare, is a good thing.

The points I've tried to make seem obvious to most gay/lesbian people. I know from plenty of experience that while Canada Customs officers are not trained in such matters as social tolerance and individual rights under the Charter, they certainly do reflect more than their share of social prejudice toward minorities, at least through rampant homophobic behaviour. This statement is being submitted with the hope that our perspectives, once outlined, might help in your interpretation of both the books in question and in your role as authorities over what Canadians can read. We hope that tolerance, compassion and social justice will prevail.

Sincerely,

Jearld Moldenhauer

p.s. Two recent articles examining the work of Tom of Finland are included for your consideration.



Revenue Canada
Customs and Excise

Revenu Canada
Douanes et Accise

Deputy Minister

Sous-ministre

Ottawa, Canada
K1A 0L5

November 17, 1989

Mr. Jearld Moldenhauer,
Glad Day Bookshop,
598A Yonge Street,
Toronto, Ontario.
M4Y 1Z3

Dear Mr. Moldenhauer:

This is further to my previous letters to you dated June 1, 1989, and August 28, 1989, concerning your Request for Re-determination of April 7, 1989. I wish to apologize sincerely for the length of time taken in replying.

The review of the publications in question has been completed and it is my decision that the material is correctly classified as obscene under tariff code 9956 of Schedule VII to the Customs Tariff. This determination is based upon the numerous depictions and descriptions in the publications of sex associated with violence (sexual assault, force), pain and domination, sex associated with degradation (group ejaculation on a person and urination and defecation as part of sexual activity), bondage and anal penetration. Some of the material also contains descriptions of incest and sexual acts involving juveniles.

As you are aware, an appeal from this decision may be made to a court, as defined in subsection 71(2) of the Customs Act, within ninety days of the date of this notification. Alternatively, at your request, these goods may be exported or abandoned to the Crown. In this regard, I have enclosed for your reference the relevant extracts from the Customs Tariff and the Customs Act. If you require any further details in this regard, please contact the Manager of the Prohibited Importations Unit in Ottawa at (613) 954-7049.

.../2

Canada

Department
of National Revenue
(Customs and Excise)

Ministère
du Revenu national
(Douanes et Accise)

As a relatively new Deputy Minister of the Department, I can assure you that I find decisions to prohibit the importation of written material most difficult. I have certainly noted your views and thoroughly considered your comments on individual rights and the literary, cultural and artistic merit of the material in question. However, I am of the view that this decision is in keeping with my responsibility to ensure the appropriate enforcement of the legislation that prohibits the importation of obscene material.

I hope that this information is of assistance in clarifying my position in this sensitive matter and that you will understand the reasons for my decision.

Sincerely,

A handwritten signature in cursive script, reading "Ruth Hubbard". The signature is written in dark ink and is positioned above the typed name.

Ruth Hubbard.



Department of Justice
Canada

Ministère de la Justice
Canada

1 Front Street West,
Suite 500,
Toronto, Ontario,
M5J 1A5

1, rue Front ouest,
Pièce 500,
Toronto (Ontario)
M5J 1A5

Tel. 973-3158

December 6, 1989

Delivered

Messrs. Campbell and Associates
Barristers and Solicitors
150 Simcoe Street
Toronto, Ontario
M5H 3G4

Attention: Charles Campbell

Dear Mr. Campbell:

Re: Glad Day Bookshop Inc. et al. v. The Queen et al.
Our File No. TO 174583

You will find enclosed our Statement of Defence, which is hereby served upon you in accordance with the Federal Court rules of practice.

I am also writing to inform you that on November 29, 1989, officials of the Prohibited Importations Unit of Canada Customs in Ottawa were advised that the detained copies of the 11 publications which are the subject matter of this action were inadvertently destroyed, except for one copy of each of these publications. The copies which were not destroyed are those which had been sent to Ottawa for review, and are now in my possession for litigation purposes.

My client regrets this occurrence, and is prepared to discuss this matter with you.

Please note that all future communications with respect to this case should be directed to me.

Yours very truly,

Debra M. McAllister

Debra M. McAllister
Counsel, Civil Litigation
Toronto Regional Office

dmm/liw
Encl.

Canada

COPY

ILER, CAMPBELL & ASSOCIATES

Barristers & Solicitors

150 Simcoe Street
Toronto, Ontario
Canada M5H 3G4
(416) 598-0103
FAX: 598-3484

Charles Campbell
Brian Iler
Murray Klippenstein
Carol Lee Smith

Associates:
Ian Anderson
Garth Dee
Paul H. Reinhardt
Bruce D. Woodrow

November 29, 1989

Russell Armstrong
CANADIAN COMMITTEE AGAINST
CUSTOMS CENSORSHIP
335 Markham Street
Toronto, Ontario
M6G 2K8

Dear Russell:

Re: Glad Day Bookshop
Jearld Moldenhauer
C.C.A.C.C.

We have filed a suit in the Federal Court on behalf of Glad Day and Jearld Moldenhauer with respect to the failure (or refusal) by Customs to decide the appeals filed with respect to an assortment of imported material. Some of the material in question was intended to be the basis of a further test case on obscenity. At the time this was launched, it was with your concurrence as well as Jearld's with the expectation the Committee would adopt the action. Jearld agreed to be responsible for legal fees if all else failed. A copy of the Statement of Claim is attached for reference.

In the context of this suit, we brought a motion seeking an order for the immediate return of various materials about which the Minister had not made a decision for some six months, some of the material which had been detained for almost a year. The morning before the motion was to be argued, the Deputy Minister delivered the decision and the motion was abandoned with costs reserved to the trial judge.

. . . /2

A) CONTINUED SUIT AGAINST DEPUTY MINISTER

We should consider whether to proceed with the main action under the Statement of Claim itself. The following significant procedural points might be argued:

1. SPEEDY DECISION

I believe we could win a declaration which provides that unless a speedy decision by the Department regarding alleged obscenity is made that materials should be released forthwith. The strong American authority supports the necessity of a very speedy *prima facie* judicial determination of obscenity to justify detention. The Deputy Minister is clearly in violation of these rules.

As you know after the Deputy Minister's decision there is an appeal to District Court and another long delay before the case is called in that court.

Whether we can go to the next step and win an argument that a speedy judicial determination also must be made by the District Court is an interesting question. I believe this is an equally sound Charter argument but one which will meet more resistance. It is an open question whether a decision about judicial speed would be an aspect of a Federal Court Declaration or something to be argued in District Court. If both these arguments succeed, and a quick prima facie judicial determination is required, it would effectively kill the customs censorship system because it would be impossible to administer.

I would like to proceed with this procedural argument.

2. DAMAGES

Jearld Moldenhauer advises that some \$4,000.00 to \$5,000.00 worth of magazines and books are under seizure. He is unsure whether or not they would be taken back by their American publishers at this stage or later after an obscenity trial. He is unsure whether or not they would be saleable in months or years after their release.

While not mentioned in the claim as drafted, the interruption of magazine deliveries to the store over the years has been quite costly. Jearld is considering adding this to the claim and continuing this portion of the action himself even after the sale of the store. We would have to work out the mechanics, but this is feasible.

In addition to the actual damages, there ought to be an amount, \$1,000.00 to \$10,000.00 for general damages for breach of Charter rights. Again this is difficult to ascertain, because the law of Charter damages is undeveloped. Whether these damages belong to the store, Jearld or the C.C.A.C.C. as a sponsor of the litigation requires discussion.

3. SYSTEMIC DISCRIMINATION

The Statement of Claim alleges, in general language, the incapacity of the customs censorship system to make decisions regarding the rights of this client and specifically it alleges that the Department is biased against the gay community.

There is one core legal argument here that is relatively simple to make. It is that the existence of Criminal Code provisions regarding seizure and prosecution of obscene material make redundant, unnecessary and unjustifiable the system of customs censorship. The balance of the arguments regarding the incapacity of the Department to understand gay issues, etc., requires very substantial evidence. I am reluctant to proceed with that factual case unless very large financial resources were available.

B) COSTS AND BENEFITS

An award of damages for loss of profit should presumably benefit Jearld and perhaps the new owners of the bookstore. A favourable determination on the question of speed and systemic discrimination benefit the community as well as the bookstore. If we proceed with this action on all three fronts, an agreement should be reached between the Committee and the store regarding the division of legal expenses and obligations if costs are awarded against us.

If we lose there may be costs to pay to the successful Crown. The bookstore is more vulnerable on this than the Committee, which is penniless. (Committee members could personally be responsible if things were pushed, but this is not a very convenient collection mechanism). An agreement on this is also required.

C) CUSTOMS APPEALS - OBSCENITY

As a result of the decision we forced from the Minister, we now have a set of materials that are ready for an appeal to District Court. These materials include Meat Men comic books, Tom of Finland cartoon books and several books which are largely text made up of various stories, both personal and fictional.

Further, we have at long last finally succeeded in getting customs to seize some of the "soft core" magazines. The December issue of In Touch, Advocate Men and Playguy have been detained and the appeal process has been set in motion. We have sent a letter demanding a speedy decision and citing our recent Application to the Federal Court and the Charter arguments noted therein.

Finally there has also been a more recent series of detentions of other material over the past two or three months which had not been appealed yet. At my request Jearld has filed Notices of Appeal with respect to this. This material includes Meat Men Five, an issue of Outlook, an issue of Oriental Guy, and several volumes of text, stories, a Phil Andros novel, etc.

From this large selection of material, we are now in a position to pick the items for which we would proceed with an appeal. This requires some careful discussion of the legal and political issues involved, not to mention costs.

Our choices range from the relatively soft core magazines to much more explicit "raunchy" cartoon books. With respect to the former the simple issue of anal sex can be isolated. The most difficult case would presumably be the cartoon books with rape and bondage fantasies. At the risk of overgeneralizing, my opinion is that the former can be won, the latter will not.

We should note that the very liberal decision from the Manitoba Supreme Court R v. Butler on the application of the Charter to the obscenity test was recently made. In it the court said that consensual sex could not violate the Charter standards of freedom of expression.

"...I am unable to conclude that the depiction of the human body or any of its parts, no matter how explicitly presented, or the visual presentation of masturbation, group sex or other heterosexual or homosexual activity, including incestuous relations, prima facie relate to sufficiently specific concerns which are pressing and substantial in a free and democratic society to justify restricting or limiting the basic freedom permitting them to be expressed."

This reasoning presents many obvious and important opportunities for us. In addition to arguing the supposed "community standard" of decency, we will now have the court's hearing on the Charter issues of free speech. The decision gives legitimacy to issues I have always wanted to raise.

We will have to discuss issues similar to those which arose in the Joy of Gay Sex case regarding experts. Something will have to be put on the record for the benefit of the court regarding the nature of gay sexuality. This will be especially important if this case proceeds in tandem with Butler to the Supreme Court of Canada. That court has repeatedly asked for better social science evidence on Charter issues. This is so especially where the Charter arguments concern that "effect" or the reasonableness of impugned legislation. While I can conceive of arguments that avoid these elements, I would expect the opposition or intervenors will present argument that catapults us into the realm of social science evaluation.

Finally the issue of costs with respect to an obscenity appeal should be discussed. Assuming the case proceeds, should we look to the bookstore or the Committee for any portion of the legal bill on this?

I am available to discuss these matters with the Committee in substantially more detail as required.

Sincerely,

COPY

Charles Campbell
CC:ck
Enclosure